



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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SPR-125683-01

MEMORANDUM FOR JACK HOLSTEIN  
INNOCENT SPOUSE PROGRAM MANAGER WI:C:CS:IS  
Attn: Lynne Morrison

FROM: Curtis G. Wilson  
Assistant Chief Counsel, Administrative Provisions and Judicial  
Practice

SUBJECT: Waivers for § 6015(f) Cases

On December 21, 2000, Congress enacted the Community Renewal Tax Relief Act of 2000 (CRTRA) as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 (2000). Section 313(a)(2)(B) of the CRTRA added § 6015(e)(5) to the Code, which provides that an individual who makes an election under § 6015(b) or 6015(c), and who agrees with the Secretary's determination, may waive in writing at any time the restrictions on collection that are imposed by § 6015(e)(1)(B) with respect to collection of the outstanding assessment, whether or not a final determination letter has been mailed.

Section 6015(e)(5) references only § 6015(b) and 6015(c) because, under § 6015(e)(1)(B), the Secretary is statutorily prohibited from conducting certain collection activities (levy and proceedings in court) after an election under § 6015(b) or 6015(c) has been filed until a specified period of time after the determination of relief has been made. However, § 6015(e)(1)(B) does not prohibit levy or proceedings in court if the taxpayer is only seeking relief under § 6015(f). Therefore, the waiver provision in § 6015(e)(5) does not reference requests for relief under § 6015(f).

The waiver used by the Service in §§ 6015(b) and 6015(c) cases provides that, by signing the waiver, the requesting spouse is waiving both the restrictions on collection provided in § 6015(e)(1)(B) and the right to petition the Tax Court regarding the claim for relief from liability. In light of the Service's position that the Tax Court has jurisdiction to determine whether the Service abused its discretion in denying relief under § 6015(f), you asked us to consider whether a requesting spouse seeking relief only under § 6015(f) could waive his or her right to petition the Tax Court.

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**Issue:**

Whether a requesting spouse seeking relief under § 6015(f) could waive his or her right to petition the Tax Court?

**Conclusion:**

Regardless of the § 6015 provision under which the requesting spouse is seeking relief, the Service cannot request that a taxpayer waive his or her right to petition the Tax Court if he or she agrees with the Service's determination of relief. However, the Service may ask the taxpayer to sign and return the preliminary determination letter if he or she agrees with the determination. If the Service receives such a signed letter, then the Service may immediately mail a final determination letter and close out the case.

**Discussion:**

Section 6015(e)(1)(A) provides that an individual who elects relief from joint and several liability under § 6015(b) or 6015(c) may petition the Tax Court to review his or her claim for relief. The petition may be filed after the earlier of the date the Secretary mails a final determination letter or 6 months after the date the election is filed with the Secretary. However, in every case, the petition must be filed within 90 days from the date the final determination letter is mailed.

Section 6015(e)(1)(B) provides that, in the case of an election under § 6015(b) or (c), the Secretary is prohibited from levying or proceeding in court against a requesting spouse from the date the claim for relief is filed until the expiration of the 90-day period described in § 6015(e)(1)(A) or, if a petition is filed with the Tax Court, until the date the Tax Court decision becomes final. This prohibition does not apply in § 6015(f) cases. Thus, if a requesting spouse only seeks relief under § 6015(f), the Service may levy and/or proceed in court against the requesting spouse while the claim is pending. As a matter of administrative policy, the Service has decided to freeze all collection while a claim for relief under § 6015(f) is pending, but the Service is not statutorily required to do so.

Section 6015(e)(5) provides that a requesting spouse who elects relief under § 6015(b) or 6015(c) may waive in writing at any time the restrictions in § 6015(e)(1)(B) with respect to collection of the outstanding assessment whether or not a notice of the Secretary's final determination of relief has been mailed. If a waiver is signed, § 6015(e)(2)(B) provides that the statute of limitations on collection is suspended from the date the claim for relief was filed until 60 days after the waiver is filed. The statute of limitations on collection is not suspended, however, if the requesting spouse seeks relief only under § 6015(f). As § 6015(e)(1)(B) and the suspension of the statute of limitations do not apply to a claim for relief under § 6015(f), there is no need for a

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requesting spouse to sign a waiver if the requesting spouse is seeking relief only under § 6015(f).

The Service has developed waivers for requesting spouses to sign for cases where an election under § 6015(b) or 6015(c) is made. The waivers were modeled after the waivers that were developed under § 6213(d). Section 6213(d) provides that a taxpayer may waive the restrictions on assessment and collection contained in § 6213(a). Section § 6213(d) does not address the waiver of the taxpayer's right to petition the Tax Court. Despite the lack of any statutory authorization to include waiver of the taxpayer's right to petition the Tax Court under § 6213(d), the § 6213(d) waivers provide that, by signing the waiver, the taxpayer is waiving his or her right to petition the Tax Court. The waiver may be signed before or after the issuance of the statutory notice of deficiency (90-day letter). If the waiver is signed before the 90-day letter is issued, the taxpayer cannot petition the Tax Court because the Service will not send the taxpayer a "ticket" to Tax Court. However, if a waiver is signed after the 90-day letter is issued, the taxpayer may petition the Tax Court during the 90-day period following the issuance of the letter despite the waiver language. Even though the risk is slight that the taxpayer will petition the Tax Court after signing a waiver, the possibility does exist that the taxpayer will file a petition.

As with the waivers used in § 6213 cases, the waivers used in § 6015 cases provide that, in addition to waiving the restrictions on collection in § 6015(e)(1)(B), the requesting spouse waives his or her right to petition the Tax Court. However, § 3468 of the IRS Restructuring and Reform Act, Pub. L. No. 105-206 (112 Stat. 685) (1998), generally prohibits officers or employees of the United States from requesting a taxpayer to waive his or her right to bring a civil action against the United States for any action taken in connection with the internal revenue laws. Thus, the waivers used in § 6015(e)(1)(B) cases should not include a waiver of the requesting spouse's right to petition the Tax Court.


Even in the absence of a signed waiver, however, chances are that a taxpayer who signs a statement indicating that he or she agrees with the Service's determination of relief will not petition the Tax Court to challenge such determination. [REDACTED]

[REDACTED]

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If you have any questions, please contact Bridget Finkenaur at (202) 622-4940.

By:   
JUDITH M. WALL  
Chief, Branch 2  
Administrative Provisions  
and Judicial Practice